

REMARKS

REQUEST FOR RECONSIDERATION

This Application has been carefully reviewed in light of the Final Office Action mailed May 13, 2004. Claims 1-11 are pending. In the Final Office Action, the Examiner rejected Claims 1-11. Applicants respectfully request reconsideration and favorable action in this case.

Section 103 Rejections

The Examiner rejects Claims 1-11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,363,421 issued to Barker et al., ("Barker") and U.S. Patent No. 6,128,656 issued to Matchefts et al., ("Matchefts"). Applicants respectfully traverse these rejections for the reasons stated below.

Matchefts is not available as prior art to the present invention, since Applicants previously submitted a Declaration pursuant to 37 C.F.R. § 1.131 to swear behind the August 10, 1998 filing date of Provisional Patent Application No. 60/096,100. *Matchefts* was filed on September 10, 1998. Therefore, the use of *Matchefts* in rejecting claims of the present invention is improper. The Office Action relies upon *Matchefts* in rejecting all pending claims.

For example, the Office Action readily admits that Barker does not disclose all of the limitations of Claims 1, 3 and 7, and relies upon a combination of Barker and *Matchefts* in rejecting Claims 1, 3 and 7. For at least these reasons, Applicants respectfully contend that the rejection of Claims 1, 3 and 7 is improper, and request allowance of Claims 1, 3 and 7.

Claims 2, 4-6 and 8-11 each depend, either directly or indirectly, from Claims 1, 3 and 7. Therefore, Applicants respectfully request allowance of Claims 2, 4-6 and 8-11 for the same reasons discussed above with regard to Claims 1, 3 and 7.

Final Rejection is Improper

Applicants respectfully contend that the finality of the Office Action is improper. Firstly, as discussed above, the Office Action relies upon a reference that is unavailable as prior art to the present invention. Secondly, the Office Action improperly contends that "Applicant's amendment necessitated the new grounds of rejection presented in this Office Action." *See Office Action, paragraph 7.* However, Claims 3-11 were not amended in response to the Office Action mailed August 29, 2003. Furthermore, Applicant's respectfully contend that the amendment to Claim 1 did not necessitate the new grounds of rejection regarding Claims 1 and 2.

The Office Action contends further, that Applicants filing of the Declaration Pursuant to 37 C.F.R. §1.131 "necessitated new grounds of rejection" and, therefore, the Office Action "is made final." Applicants respectfully request that the Examiner cite support for the contention that a final Office Action is appropriate if grounds of rejection are changed in response to a Declaration pursuant to 37 C.F.R. §1.131, submitted after the previous Office Action.

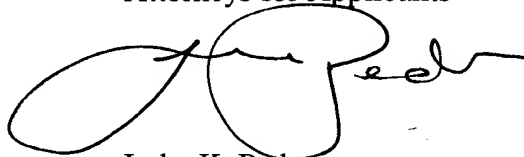
Conclusions

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

Applicants believe no fees are due. However, should there be a fee discrepancy, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants

A handwritten signature in black ink, appearing to read 'Luke K. Pedersen', with a large, stylized initial 'L'.

Luke K. Pedersen
Reg. No. 45,003

Date: 7/13/04

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